MONTANA LEGISLATIVE HISTORY

Chapter 94 19 77

Bill H _____ S 339 Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) 3-7 ✓ C

_____ ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Judiciary

Hearing Date(s) 2-10 ✓ C

_____ ___C

_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 339

INTRODUCED BY Roberts

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT, IN A CRIMINAL PROSECUTION FOR RAPE, EVIDENCE OF FAILURE TO MAKE A TIMELY COMPLAINT DOES NOT RAISE ANY PRESUMPTION AS TO THE CREDIBILITY OF THE VICTIM; AMENDING SECTION 94-5-503, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"94-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

If the defendant proposes, for any purpose, to offer evidence described in (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) ~~If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such facts standing alone may not bar conviction.~~ Evidence of failure to make a timely complaint does not raise any presumption as to the credibility of the victim."

-End-

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
S.B. 274	1-25-77	Trsfd. out 1-28-77							
S.B. 278	1-26-77	2-8-77	2-14-77		2-14-77				
S.B. 301	1-26-77	2-8-77	2-17-77	2-17-77					
S.B. 311	1-27-77	2-11-77	2-18-77			2-18-77			
S.B. 318	1-28-77	2-9-77	2-15-77			2-15-77			
S.B. 326	1-28-77	2-7-77	2-7-77			2-7-77			
S.B. 332	1-29-77	2-10-77	2-12-77		2-12-77				
S.B. 335	1-29-77	2-7-77	2-18-77			2-18-77			
S.B. 337	1-29-77	2-14-77	2-14-77		2-14-77				
S.B. 338	1-29-77	2-14-77	2-14-77		2-14-77				
S.B. 339	1-29-77	2-10-77	2-10-77			2-10-77			
S.B. 343	1-29-77	2-14-77	2-14-77		2-14-77				
S.B. 356	2-1-77	2-14-77	2-14-77			2-14-77			
S.B. 369	2-1-77	2-9-77	2-14-77		2-14-77				
S.B. 385	2-3-77	2-17-77	2-18-77	2-18-77					
S.B. 393	2-14-77	2-17-77	2-18-77		2-18-77				

(Use Separate Sheet for Senate, House Bills, and Resolutions)

are apathetic about the problem of juveniles shoplifting and that he does not feel that section 2 is the proper way to correct the problem of shoplifting. He also said that he is very concerned about section 2 of this bill because he does not feel that a parent should be subjected to a fine for something he did not do.

At this time, there being no more opponents, the Chairman allowed committee members to ask questions of the witnesses. The hearing on S.B. 332 was then closed.

CONSIDERATION OF SENATE BILLS 337 and 338:

Senator Bob Brown of District 10, as sponsor of this bill, explained it to the committee. He then introduced Tom Dowling, representing the County Attorney's Assn., who spoke as a proponent of this bill, saying that he would like to prosecute a man who burns his own house for monetary gain by committing arson.

Mr. Dowling then proceeded to S.B. 338 and explained that bill for the committee. He said that a misdemeanor or felony is not actually determined until a man is sentenced and, if he is not sentenced to a year or more, it is only a misdemeanor.

The Chairman then allowed the committee to ask questions on these two bills. During questioning it was brought out that a victim of a crime should really recover the amount of his loss. At this time the hearing on S.B. 337 and 338 was closed.

CONSIDERATION OF SENATE BILL 339:

Senator Regan, as sponsor of this bill, said that they feel the language used in this bill is much stronger and more adequate than that in the current law. She then moved that page 2, section 1, subsection (6), be amended following "complaint by inserting "or immediate outcry". The motion carried.

Senator Roberts moved that S.B. 339 as amended DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 343:

Since Senator Hager was unable to be present to explain this bill which he sponsored, Tom Dowling presented it to the committee for him. He told the committee that it was a bill on sexual assault and that they were just being cautious in introducing this bill. There were no proponents or opponents of this bill present to testify. Senator Roberts suggested that Dowling contact Duke Crowley and work out something on S.B. 343. The Chairman so ordered.

There being no further business, the committee adjourned at 11:05 a.m. to resume on adjournment this day in Room 415 to take up 10 bills in executive session.

Jean A. Turnage

SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

9:30 a.m.

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2/10/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret			✓

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 339	Providing that in prosecution for rape failure to make a timely complaint does not raise any presumption of credibility of the victim.	2-19	Regan	March 7 Monday	concurred in	3-7
SJR 28	Requesting a study of the sentencing provisions of the Montana Criminal Code of 1973.	2-21	Thomas	March 4th	table concurred in	3-8 4/8
SJR 19	Requesting a study of legislation to compensate victims of crime.	2-22	Lockrem	March 4th	not concurred rereferred table concurred in	3/8 3/10 3/10 4/14
SB 37	Requiring administrative rules to conform with legislative intent.	2-22	Turnage	March 7 Monday	concurred in amended	3/25
SB 356	Providing a statute of limitations for legal malpractice actions.	2-22	Turnage	March 7 Monday	concurred in	3-7
SB 395	Providing that a highway patrolman receive regular duty pay while responding to a subpoena in connection with his duties.	2-22	Mehrens	March 7	taken by chief clerk office March 4	

JUDICIARY COMMITTEE
March 7, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana on Monday. All members were present except Representative Teague, who came in later.

Scheduled for hearing were Senate Bills 92, 230, 339, 398, 37, and 356.

SENATE BILL #339:

SENATOR REGAN, DISTRICT #31:
This bill addresses the problem of a woman who has been raped and does not immediately file charges. Evidence of failure to file charges or make an immediate outcry does not raise any presumption as to lack of credibility of the victim.

There were no other proponents, no opponents and the hearing closed on Senate Bill 339.

SENATE BILL #230:

SENATOR McCALLUM, DISTRICT #12:
This bill provides for time of filing or paying upon mailing, for proof of such mailing, and for filing or paying on nonbusiness days, such as if payment falls upon a Saturday, Sunday, or legal holiday, such filing is timely if performed on the next business day. This does not apply to documents accepted with the secretary of state.

GORDON McGOWAN, MONTANA RAILROAD ASSOCIATION:
The mail service does not seem to be as good as it used to be. He went on to talk about mail not being delivered, tax notices lost or late in arriving, etc.

JO ANN WOODGERD, SECRETARY OF STATES OFFICE:
We feel we have to accept the postmark for the date of receipt rather than the date of mailing.

There was some general discussion about mail service, delivery of tax notices, or failure to deliver, etc.

The hearing closed on Senate Bill 230.

THE HEARING OPENED ON SENATE BILL 92:

SENATOR THIESSON, DISTRICT #27:
This bill sets up a governing board, and amends the duties of the board and the librarian. It also deletes the section of specific duties. The repealer will repeal section 4 of the law. It puts the

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 7, 1977

The committee went into executive session at 8:20 a.m. on Monday March 7, 1977 in room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided. All members were present with the exception of Representative Teague, absent.

SENATE BILL #92:
REPRESENTATIVE DAY moved to amend lines 14 through 19. After some discussion the motion failed with Representatives Courtney and Day voting "aye".
REPRESENTATIVE HOLMES moved "be concurred in".
The motion carried with Representative Day voting "no".

SENATE BILL #230:
Chairman Scully asked that Senator McCallum be comtacted about explaining the mailing portion of the bill.

SENATE BILL #339:
REPRESENTATIVE HOLMES moved "be concurred in".
The motion carried with the vote unanimous.

SENATE BILL #30:
REPRESENTATIVE HAND moved "be concurred in".
There was some discussion about the bill being in conflict with another section. The question was then called.
The motion carried with the vote unanimous.

CHAIRMAN SCULLY had to leave to attend his hearing in the Senate on one of his bills. Representative Lory took over the chair.

The hearing was then held on Senate Bill #37 (contained in the regular minutes of the committee).

The executive session resumed at 9:15 a.m.

SENATE BILL #398:
There was general discussion about the meaning of homestead as contained in this bill.
REPRESENTATIVE EUDAILY moved "be concurred in".
REPRESENTATIVE DAY moved to amend lines 15 and 19 to raise the amount of exemption. The motion failed with Representatives Keyser, Day and Dussault voting "yes".
The motion of the oringinal "be concurred in" carried with the vote unanimous.

SENATE BILL #356:
REPRESENTATIVE EUDAILY moved to amend page 2, line 18. Representative Dussault led a discussion about amending to add a new sub-section.
The motion to amend failed.

REPRESENTATIVE TEAGUE came in.

SENATE BILL NO. 339

INTRODUCED BY REGAN, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT, IN A CRIMINAL PROSECUTION FOR RAPE, EVIDENCE OF FAILURE TO MAKE A TIMELY COMPLAINT OR IMMEDIATE OUTCRY DOES NOT RAISE ANY PRESUMPTION AS TO THE CREDIBILITY OF THE VICTIM; AMENDING SECTION 94-5-503, R.C.M. 1947."

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-End-